

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Joshua Richardson	Team: Squad #15	CCRB Case #: 201606619	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 07/27/2016 2:00 PM	Location of Incident: 587 Quincy Street, 1st Floor	Precinct: 81	18 Mo. SOL 1/27/2018	EO SOL 1/27/2018	
Date/Time CV Reported Wed, 07/27/2016 8:12 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/02/2016 10:58 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT EreK Powers	05297	944907	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mark Xylas	11251	948160	081 PCT
2. POF Amber Lagrandier	05373	940352	081 PCT
3. POM Robert Mcneill	21758	955174	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT EreK Powers	Abuse: Sergeant EreK Powers entered and searched § 87(2)(b) in Brooklyn.	
B.SGT EreK Powers	Force: Sergeant EreK Powers used physical force against § 87(2)(b)	
C.SGT EreK Powers	Force: Sergeant EreK Powers restricted § 87(2)(b)'s breathing.	
D.SGT EreK Powers	Abuse: Sergeant EreK Powers authorized the issuance of a summons to § 87(2)(b)	

Case Summary

On July 27, 2016, § 87(2)(b) called the IAB Command Center generating IAB Log No. 16-26608. The complaint was forwarded to the CCRB on August 2, 2016.

On July 27, 2016, at approximately 1:30pm, Sgt. Erek Powers, PO Mark Xylas, PO Amber Lagrandier, and PO Robert McNeill, all of the 81st Precinct, responded to § 87(2)(b) in Brooklyn, where they were informed by the female victim, § 87(2)(b) that she had seen a § 87(2)(b) § 87(2)(b) her ex-boyfriend, who robbed her earlier in the day through the first floor window apartment at the location. This was the window of § 87(2)(b)'s apartment, who was inside at the time.

Sgt. Powers, and PO Xylas, knocked on § 87(2)(b)'s door, and when he opened it, explained the situation to him. § 87(2)(b) refused to let the officers inside his apartment. During their brief conversation, the officers heard a noise coming from inside the back of the apartment. Sgt. Powers then entered the apartment, as § 87(2)(b) tried to block him with his body (**Allegation A**). After PO Xylas entered the apartment, and placed a handcuff on § 87(2)(b) Sgt. Powers went into the rear of the apartment and conducted a person search in the back room (**Within Allegation A**)

During this time, PO Xylas and PO McNeill began to struggle to successfully place § 87(2)(b) in handcuffs. When Sgt. Powers returned from the search, he approached § 87(2)(b) and allegedly grabbed him by the back of his shirt and threw him to the floor (**Allegation B**). Sgt. Powers then allegedly placed his knee on the lower back area of § 87(2)(b) which caused him to have difficulty breathing (**Allegation C**).

Once successfully handcuffed, § 87(2)(b) was taken outside and then transported the 81st Precinct from where he was released with a disorderly conduct summons issued by PO Xylas. (**Allegation D**)

§ 87(2)(g)

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Mediation, Civil and Criminal Histories

- § 87(2)(b) was offered mediation as an alternative to resolve this complaint during his sworn statement on August 12, 2016, but rejected it because he does not want to see the Sgt. Powers again.
- On December 30, 2016, a request was made to determine if a Notice of Claim was filed in regards to this incident. Confirmation from the Office of the New York City Comptroller will be added to the case file upon receipt.
- On January 5, 2017, a New York State Office of Court Administration database search revealed no prior criminal convictions for § 87(2)(b) (Board Review 01)

- On January 6, 2017, the undersigned attempted to contact the Brooklyn Criminal Court Summonses Disposition line to be informed of the disposition of the criminal court summons § 87(2)(b) received, but there was no answer.

Civilian and Officer CCRB Histories

- This is the first complaint filed by § 87(2)(b) at the CCRB. (Board Review 02)
- Sgt. Powers has been a member of service for 9 years and has had 24 prior CCRB allegations for 12 different cases. In CCRB case number 201407556, an allegation of premises entered and searched was “Substantiated.” The Board’s recommendation was “Charges”; however as of the writing of this report there is no NYPD Disposition available. In CCRB case numbers 201101753 and 201409997, allegations of premises searched and entered were “Exonerated.” In CCRB case number 201501417 an allegation of physical force was “Exonerated.”
- PO Xylas has been a member of service for 7 years and has been the subject of 21 prior CCRB allegations for 11 cases. § 87(2)(g)

Findings and Recommendations

Explanation of Subject Officers Identification

According to PO Xylas, he had a conversation with § 87(2)(b) outside 587 Quincy Street, in Brooklyn about how § 87(2)(b) was in the process of getting a new job as a security guard. PO Xylas felt § 87(2)(b) wasn’t a bad person, and just made a mistake, and wanted to use his discretion to issue § 87(2)(b) a criminal court summons instead of putting him through the system. PO Xylas told Sgt. Powers about the conversation he had with § 87(2)(b) and consulted with Sgt. Powers about the issuance of the criminal court summons, and how PO Xylas felt that issuing § 87(2)(b) a summons would be the best action to take. Sgt. Powers did not object and gave him the “OK” to do that.

However Sgt. Powers differed in this aspect of his testimony. Sgt. Powers stated that he was the officer to have the above mentioned conversation with § 87(2)(b) outside of the 587 Quincy Street. Sgt. Powers stated that he decided to be nice, and instead of putting § 87(2)(b) through the system for Obstructing Governmental Administration, and Assault, he would just give him a disorderly conduct summons for fighting.

Given that Sgt. Powers was the supervisory officer on scene during the incident, PO Xylas’s account that after consulting Sgt. Powers, Sgt. Powers did not object to the issuance of the summons, and Sgt. Powers stating he, himself, authorized the issuance of the criminal court summons to § 87(2)(b) this allegation is being pled against Sgt. Powers.

Allegation A: Abuse of Authority: Sergeant Erik Powers entered and searched 587 Quincy Street, 1st Floor, in Brooklyn.

§ 87(2)(g)

It is undisputed that Sgt. Powers entered and searched § 87(2)(b) s apartment without consent or a warrant. § 87(2)(g)

§ 87(2)(b) testified he heard a knock on his apartment door, and a voice saying, “Police!” He opened the door, at which time he saw two uniformed officers, identified via the investigation as PO Mark Xylas and PO Amber Lagrandier. PO Xylas told § 87(2)(b) that the officers needed to enter his apartment and conduct a search for an armed perpetrator. PO Xylas explained that witnesses had called the police informing that the perpetrator was looking out of § 87(2)(b)’s living room window, which faces the street. The officers referred to the suspect as “§ 87(2)(b)” and gave § 87(2)(b) no other information about the suspect. § 87(2)(b) told PO Xylas that he did not know any “§ 87(2)(b)” and that no one by any variation of that name lived in the apartment. § 87(2)(b) asked PO Xylas whether they had a warrant and PO Xylas told him that they did not need one because these were emergency circumstances. PO Xylas and § 87(2)(b) spoke for about two minutes, during which time § 87(2)(b) was attempting to block the open doorway with his body. During this conversation, an officer, identified via the investigation as Sgt. Erik Powers, entered § 87(2)(b)’s apartment without saying anything and without § 87(2)(b)’s consent. He slipped through the doorway, to the left side of § 87(2)(b). Sgt. Powers began walking directly toward the back hallway leading to the bedrooms when § 87(2)(b) stepped in front of him and told him that he could not enter his apartment without a warrant. Immediately after, PO Xylas grabbed § 87(2)(b) from behind and placed a handcuff on his left wrist. Sgt. Powers proceeded to walk towards the hallway further inside the apartment but could not see what rooms Sgt. Powers entered. (Board Review 03)

Sgt. Powers testified that he received a call on his cell phone from PO Lagrandier informing him that § 87(2)(b) was in front of 587 Quincy Street, stating that she just seen § 87(2)(b) her ex-boyfriend, inside of the location on the 1st floor apartment through the front window. At the scene, Sgt. Powers spoke to § 87(2)(b) who stated the same story that PO Lagrandier told him on the cell phone. § 87(2)(b) stated she saw the perpetrator one-two minutes before he arrived on scene. Sgt. Powers knocked on the front door of the first floor apartment with PO Xylas. Sgt. Powers heard noises, similar to people walking, coming from inside the apartment. § 87(2)(b) answered the door quickly and he explained the situation to him telling that, “They have a female victim outside saying that she saw her ex-boyfriend inside this apartment with a gun, and previously menaced her before.” Sgt. Powers asked § 87(2)(b) if he can come inside and search the apartment to make sure that § 87(2)(b) is not in there, but § 87(2)(b) refused. Sgt. Powers continued to explain the situation and asked again to come inside to search the apartment, but § 87(2)(b) still refused. Sgt. Powers provided the name of § 87(2)(b) to § 87(2)(b). § 87(2)(b) stated that “Yea that’s my boy; he was here but left a short while ago.” Ten or twenty seconds into the conversation, Sgt. Powers heard a noise, feet walking, coming from the back of the apartment, and peeked his head over § 87(2)(b)’s right shoulder to see what it was; Sgt. Powers did not see anybody. § 87(2)(b) stated to Sgt. Powers, “Get the fuck out”, and pushed him with his forearm to the middle of his chest which caused him to take two steps back and caused § 87(2)(b) to come outside into the hallway. Sgt. Powers gave § 87(2)(b) a push back in § 87(2)(b)’s chest, with both his hands because § 87(2)(b) was still advancing towards him. This push caused § 87(2)(b) to stumble back into his apartment. At this point, he and PO Xylas went inside the apartment to place § 87(2)(b) under arrest for Obstructing Governmental Administration. While trying to handcuff § 87(2)(b) Sgt. Powers heard the feet walking noise in the back room again, and thought that since there is a possibility of an individual being in the apartment with a firearm, for his safety he felt he should check it out because he did not feel safe and wanted to avoid the

possibility of a “sneak attack.” Sgt. Powers went into the back room and conducted a “person search”, in that he just looked to see if any individual was there. Sgt. Powers did not see anyone and returned to the living room where he saw PO Xylas struggling to handcuff § 87(2)(b). Sgt. Powers then went to assist PO Xylas in restraining § 87(2)(b) (Board Review 04)

PO Xylas testimony was consistent with that of Sgt. Powers with the following exceptions: § 87(2)(b) informed him that when the police come, § 87(2)(b) exits through the back window of the first floor apartment, goes up to the roof, and hops the roof to other buildings so he can get away from the cops. When they heard the noise coming from inside the apartment while talking to § 87(2)(b) Sgt. Powers said something similar to “Alright we got to go and see if this kid is in here.” Sgt. Powers entered the apartment first, with resistance by § 87(2)(b) in that § 87(2)(b) stepped in front of him not allowing him to talk towards the back of the apartment. PO Xylas did not know what Sgt. Powers was doing in the back of the apartment, but stated that all he knows is that Sgt. Powers went into the right hallway and towards the back of the apartment for approximately 15-30 seconds before returning to the living room area. (Board Review 05)

PO Lagrandier’s testimony was consistent with the testimonies provided by Sgt. Powers and PO Xylas with the following exceptions: she did not know how long Sgt. Powers was in the back of the apartment, and could not see what Sgt. Powers was doing in the back of the apartment. (Board Review 06)

PO McNeill testified they all entered the apartment but he does not know what Sgt. Powers was doing inside the apartment, because he was focused on § 87(2)(b) because PO McNeill was assisting PO Xylas in trying to handcuff § 87(2)(b) (Board Review 07)

An officer may not make a warrantless and nonconsensual entry into a residence unless there are exigent circumstances or an emergency. People v. Mitchell, 39 N.Y.2d 173 (1976). (Board Review 08). Exigent circumstances solely apply to cases in which the entry is for the purpose of making an arrest or seizing evidence. Payton v. New York, 445 U.S. 573 (1980). (Board Review 09). To fall under the emergency exception to the warrant requirement, an officer must (1) have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property; (2) the entry must not be primarily motivated by intent to arrest and seize evidence; and (3) there must be some reasonable basis to associate the emergency with the place being entered. Mitchell, at 174.

During the course of the investigation Event Informations § 87(2)(b) and § 87(2)(b) were located. The first, Event Information § 87(2)(b) begins at 9:36am on July 27, 2016, and indicates an unknown female caller who called 911 and told the operator that her daughter’s boyfriend is trying to kill her, and the male states that he has a firearm. The mother told the operator that the location of this incident was at 587 Quincy Street on the in apartment 2A. The second, Event Information § 87(2)(b) begins at 1:42pm on the same date, and indicates that the incident is in regards to a past domestic assault at 587 Quincy Street apartment 2A, and gives a physical description of the perpetrator, which was: Hispanic male, heavy set with beard.

All of the officers testified that they responded to the scene, at approximately 1:30pm, because there was a 911 call for a past robbery. From Criminal Complaint Report § 87(2)(b), it was

indicated that the corresponding 911 call and incident took place on July 27, 2016, but at 9:30am, and that there was no weapon or injuries involved during the incident (Board Review 10). The officers testified that when they spoke to § 87(2)(b) in front of the location, she informed them that § 87(2)(b) is known to carry a firearm, but they didn't remember if she said he was carrying a firearm on that day. Only Sgt. Powers testified that § 87(2)(b) stated that § 87(2)(b) had a firearm on him at that time. Also, once PO Lagrandier and PO McNeill were informed by § 87(2)(b) that § 87(2)(b) is known to carry a firearm, § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation B: Abuse of Authority: Sergeant Erik Powers used physical force against § 87(2)(b)

Allegation C: Abuse of Authority: Sergeant Erik Powers restricted § 87(2)(b)'s breathing.

It is undisputed that Sgt. Powers was present during § 87(2)(b)'s handcuffing. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) testified that as PO McNeill and PO Xylas were in the process of handcuffing him and had him chest front on the couch, Sgt. Powers approached him and grabbed him by the back of his shirt, and threw him to the floor. Sgt. Powers then placed a knee on the his mid/lower back which caused § 87(2)(b) to have trouble breathing for an unspecified amount of time.

According to Sgt. Powers, when he returned from the back room after approximately five seconds, he observed PO Xylas struggling with § 87(2)(b) on the couch and floor in the living

room. § 87(2)(b) was on his chest while PO Xylas was on § 87(2)(b)'s back. § 87(2)(b) was partially on the floor and partially on the couch. Sgt. Powers did not see how they got into that position. Sgt. Powers assisted PO Xylas in handcuffing § 87(2)(b) in that he got control of § 87(2)(b)'s right arm while on § 87(2)(b)'s right side, and that they finally handcuffed him while § 87(2)(b) was still in the position described above. Sgt. Powers did not grab § 87(2)(b) by the back of his shirt and throw him to the floor. Sgt. Powers did not recall placing his knee on the lower back area of § 87(2)(b) never complained that he could not breathe.

PO Xylas's was consistent with that of Sgt. Powers with the following exceptions: when Sgt. Powers assisted he grabbed § 87(2)(b)'s left arm, and that was the only physical contact Sgt. Powers made with § 87(2)(b). PO Xylas did not see Sgt. Powers throw § 87(2)(b) to the floor or place a knee of § 87(2)(b)'s back. PO Xylas did not observe any injuries on § 87(2)(b) nor did he hear § 87(2)(b) complain of any issues related to his breathing.

PO Lagrandier stated that when Sgt. Powers returned from the back room, she told him that PO Xylas and PO McNeill needed assistance in handcuffing § 87(2)(b). PO Lagrandier could not articulate the physical contact Sgt. Powers made with § 87(2)(b) but did corroborate the fact that § 87(2)(b) was leaned over an air mattress which was on a couch when he was successfully handcuffed. PO Lagrandier did not see Sgt. Powers throw § 87(2)(b) to the floor or place a knee of § 87(2)(b)'s back. PO Lagrandier did not observe any injuries on § 87(2)(b) nor did he hear § 87(2)(b) complain of any issues related to his breathing.

PO McNeill testified that he and PO Xylas were the only officers involved in handcuffing § 87(2)(b) and that Sgt. Powers did not assist at all. PO McNeill did not see Sgt. Powers throw § 87(2)(b) to the floor or place a knee of § 87(2)(b)'s back. PO McNeill did not observe any injuries on § 87(2)(b) nor did he hear § 87(2)(b) complain of any issues related to his breathing.

On § 87(2)(b), at approximately five hours after the incident, § 87(2)(b) visited The § 87(2)(b). He complained of chest pain and he alleged that he was assaulted by the police. § 87(2)(b) complained that the police pinned him to the ground face down with a knee in his back. § 87(2)(b) informed the hospital staff that he was concerned with the physical contact because he has a history of asthma. The records didn't reveal anything that was wrong with § 87(2)(b) and he was discharged after a couple of medical tests. (See Medical Records).

§ 87(2)(b) and the police officers involved gave inconsistent testimonies regarding the level of force used at the time of § 87(2)(b)'s arrest. While § 87(2)(b) alleged that Sgt. Powers threw him to the floor and then put his knee on his back Sgt. Powers denies these allegations, and the other officers involved in the incident deny seeing Sgt. Powers commit the alleged conduct. Furthermore, all of the officers stated that they did not see any visible injuries on § 87(2)(b) or hear him complain his breathing being restricted. In addition, § 87(2)(b)'s medical records had nothing of substance in regards to any injuries sustained by § 87(2)(b).

§ 87(2)(b), § 87(2)(g)

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Allegation D: Abuse of Authority: Sergeant Erik Powers authorized the issuance of a summons to § 87(2)(b)

§ 87(2)(g)

It is undisputed that § 87(2)(b) was issued a disorderly conduct summons as a result of this incident. § 87(2)(g)

§ 87(2)(b) stated that he was released from the 81st Precinct stationhouse with a disorderly conduct summons for failing to comply with police orders and being combative during a police officer perpetrator search.

PO Xylas stated that when he walked § 87(2)(b) outside the location they had a talk and PO Xylas stated that § 87(2)(b) was a cool guy. § 87(2)(b) apologized at that point, and that if he knew they weren't going to search his apartment he would have let them in. § 87(2)(b) stated that being arrested for this was going to "jam him up" because he is the middle of a process to become a security guard and it would mess up his record. PO Xylas explained to the undersigned that he felt bad for § 87(2)(b) and didn't feel the need to put § 87(2)(b) through the system, and that even though § 87(2)(b)'s actions could have resulted in him going through the system, PO Xylas used his discretion of not putting § 87(2)(b) through the system and just issuing him a Disorderly Conduct summons would be enough police action for him. PO Xylas stated that § 87(2)(b) didn't seem like a bad person and he just made a bad decision, and he had no active warrants. PO Xylas stated that he thought § 87(2)(b) made a stupid mistake, and PO Xylas just felt it would have been better and more appropriate just to release him with a criminal court summons. PO Xylas stated that at no point did a crowd form during this incident, and the only individuals in which § 87(2)(b) was fighting was the police officers. On their way to the 81st Precinct, PO Xylas told Sgt. Powers about the conversation he had with § 87(2)(b) and consulted with Sgt. Powers about the issuance of the criminal court summons. Sgt. Powers did not object and gave him the "OK" to do that.

While he did not mention a conversation with PO Xylas about the disorderly conduct summons, Sgt. Powers testimony was consistent with PO Xylas's with the following exceptions: Sgt. Powers had the above mentioned conversation with § 87(2)(b) outside of the location, and instead of putting § 87(2)(b) through the system for Assault, Obstructing Governmental Administration and Resisting Arrest, he decided to be nice and just issued him a disorderly conduct summons instead for fighting. Sgt. Powers stated that § 87(2)(b) was not fighting with anyone else besides police officers, and a crowd never formed around the incident.

PO Lagrandier and PO McNeill both stated that know PO Xylas ultimately gave § 87(2)(b) a disorderly conduct summons. Both stated that § 87(2)(b) was not fighting with anyone else besides police officers, and a crowd never formed around the incident.

New York State Penal Law 240.20(1) indicated that a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk

§ 87(2)(b), § 87(2)(g)

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date